Canadian Human Rights Tribunal

2010-2011

Departmental Performance Report

The Honourable Robert Douglas Nicholson
Minister of Justice and Attorney General of Canada

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Chairperson's Message

I am pleased to present this report of the Canadian Human Rights Tribunal's (the Tribunal) performance as measured against the plans and priorities that were established in the fall of 2009. Human rights complaints of discrimination involve issues that touch the dignity of the person and often involve the most-disenfranchised group of Canadians. The principal barriers to access to justice for human rights complainants before the Tribunal are: legal costs in having complaints heard and delays. My aspiration is to provide Canadians with a fair and fast venue to be heard without having to incur significant legal costs. More importantly, my objective is to provide the parties with a model of restorative justice that meets their needs.

In this regard, 2010-2011 represents my first full twelve month consecutive period of time as Chairperson and Chief Executive Officer of the Tribunal. It has been a challenging but rewarding 12 months and I am pleased to report that progress has been made in reaching the objectives I laid out when I took office. These objectives involved intensive pre-hearing case management to narrow the issues of litigation and abbreviate the hearings by focusing on facts in dispute. Under the reporting period over 80% of inquiries were concluded within 12 months of referral, an increase of 10% over last fiscal year. In addition, we have actively promoted the use of proven approaches to mediation for resolving complaints in a more timely and efficient manner and I am pleased to report that of the 41 cases closed in 2010-2011, 23 of these were as a result of mediation.

In the past year, I have also redirected resources to enhance the legal services capacity of the Tribunal. This will allow us to better focus our efforts on the core mandate of ensuring individuals have equal access to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal. I would like to acknowledge and thank all the full and part-time members, as well as the dedicated staff of the Tribunal, whose expertise and wealth of experience serves all Canadians by resolving complaints fairly and quickly.

We will continue to search for innovative ways to provide effective and efficient adjudicative processes that allows parties to access justice in a timely fashion as we move ahead toward achieving an ideal society based on diversity, equality and fairness.

Shirish P. Chotalia, Q.C.
Chairperson

Section I: Organizational Overview

Raison d'être

The Canadian Human Rights Tribunal is a quasi-judicial body that hears complaints of discrimination referred by the Canadian Human Rights Commission and determines whether the activities complained of violate the *Canadian Human Rights Act* (CHRA). The purpose of the CHRA is to protect individuals from discrimination and to promote equal opportunity. The Tribunal also decides cases brought under the *Employment Equity Act* (EEA) and, pursuant to section 11 of the CHRA, determines allegations of wage disparity between men and women doing work of equal value in the same establishment.

Responsibilities

In hearing complaints under the CHRA and the EEA, the Canadian Human Rights Tribunal considers matters concerning employment or the provision of goods, services, facilities or accommodation. The CHRA makes it an offence for a federally regulated employer or service provider to discriminate against an individual or group on any of the following grounds:

- race;
- national or ethnic origin;
- colour;
- religion;
- age;
- sex (includes pay equity, pregnancy, childbirth and harassment, although harassment can apply to all grounds);
- marital status;
- family status;
- sexual orientation;
- disability (can be mental or physical, and includes disfigurement and past, existing or perceived alcohol or drug dependence);
- conviction for which a pardon has been granted.

The Tribunal's jurisdiction covers matters that come within the legislative authority of the Parliament of Canada, including those concerning federal government departments and agencies, as well as banks, airlines and other federally regulated employers and providers of goods, services, facilities and accommodation. The Tribunal holds public hearings to inquire into complaints of discrimination. Based on evidence and the law (often conflicting and complex), it determines whether discrimination has occurred. If it makes a finding of discrimination, the

Tribunal determines the appropriate remedy to compensate the victim of the discriminatory practice, as well as policy adjustments necessary to prevent future discrimination.

The majority of discriminatory acts that the Tribunal adjudicates are not malicious. Many conflicts arise from long-standing practices, legitimate concerns of employers, or conflicting interpretations of statutes and precedents. The role of the Tribunal is to discern the positions of the parties and establish fair and appropriate rules to resolve the dispute.

The Tribunal may inquire only into complaints under the CHRA that are referred to it by the Canadian Human Rights Commission, usually after a full investigation by the Commission. The Commission resolves most cases without the Tribunal's intervention. Cases referred to the Tribunal generally involve complicated legal issues, new human rights issues, unexplored areas of discrimination or multi-faceted evidentiary complaints that must be heard under oath, especially in cases with conflicting evidence that involve issues of credibility.

The Tribunal is not an advocate for the CHRA; that is the role of the Commission. The Tribunal has a statutory mandate to apply the Act based solely on the evidence presented and on current case law. If there is no evidence to support an allegation, then the Tribunal must dismiss the complaint.

The Tribunal reports to Parliament through the Minister of Justice.

Organizational Structure

The Canadian Human Rights Tribunal is a small, permanent organization comprising a full-time Chairperson and Vice-Chairperson, and up to 13 full or part-time members.

Members — To be eligible for appointment by the Governor in Council, Tribunal members must have experience, expertise, interest in and sensitivity to human rights. Under the CHRA, both the Chairperson and the Vice-Chairperson must have been a member of the bar for more than ten years. Terms of office are up to five years for the thirteen full or part-time members and up to seven years for the Chairperson and Vice-Chairperson. Throughout their terms, Tribunal members take training and attend briefing sessions on such topics as decision-writing techniques, evidence and procedure, and in-depth analysis of Canadian human rights issues.

Registry Operations — Administrative responsibility for the Tribunal rests with the Registry. It plans and arranges hearings, acts as liaison between the parties and Tribunal members, and provides administrative support.

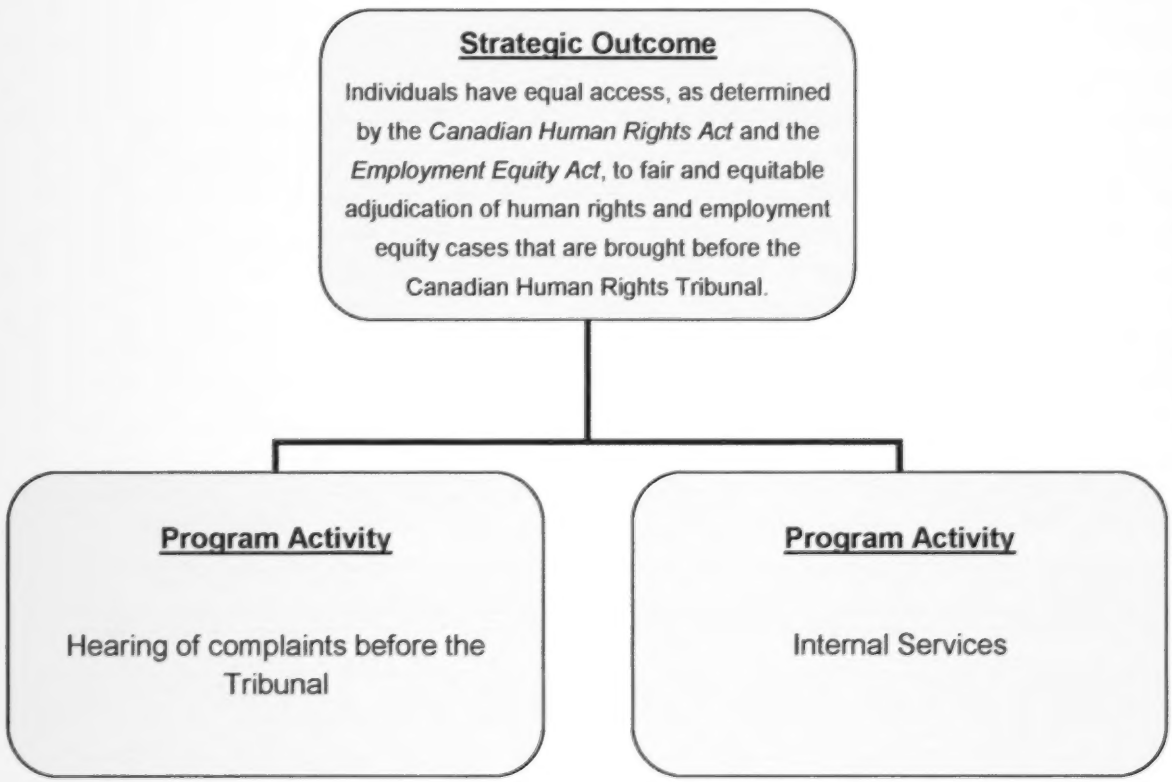
Internal Services — Internal services are activities and resources that support the needs of the Tribunal's operating program and other corporate obligations. They include corporate, legal, financial, human resources, and information management and technology services. Human resources services are supplemented through a contractual agreement with Public Works and Government Services Canada.

Strategic Outcome and Program Activity Architecture (PAA)

Strategic outcome: Individuals have equal access, as determined by the Canadian Human Rights Act and the Employment Equity Act, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.

There are two program activities conducted to support achievement of the strategic outcome: (1) Hearings of complaints before the Tribunal; and (2) Internal Services.

Program Activity Architecture


Strategic Outcome
Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.
Program Activity
Hearing of complaints before the Tribunal
Program Activity
Internal Services

Organizational Priorities

Priority	Type	Strategic Outcome and Program Activity
Continuous program improvement	Ongoing	Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal, and is directly linked to our program activity Hearing of Complaints before the Tribunal.
Status: Met all		
By resolving matters, through mediation or adjudication, the Tribunal effectively and directly contributes to its strategic outcome.		

Priority	Type	Strategic Outcome and Program Activity
Strengthen corporate management capacity	Ongoing	Internal Services which supports our Strategic Outcome
Status: Mostly met		
Plans were developed that included initiatives such as a restructuring of the organization and the acquisition of corporate services to make operations more cost-effective while better managing risks. During the fourth quarter of the fiscal year implementation of these plans began.		

Priority	Type	Strategic Outcome and Program Activity
Strengthen information management and information technology capacity	New	Internal Services which supports our Strategic Outcome
Status: Mostly Met		
The groundwork was laid for acquiring IT services from PWGSC in order to free up administrative funds that could be reallocated to enhancing legal and para-legal support for members of the Tribunal conducting core activities such as pre-hearing management, mediation, hearings and issuing ruling and decisions.		

Risk Analysis

The Tribunal is in the process of completing an organization wide risk analysis. The approach taken is consistent with the guidance and good practices outlined in the Management Accountability Framework, Treasury Board's Policy on Integrated Risk Management and the COSO Enterprise Risk Management Framework. An external resource was engaged to conduct an independent and objective assessment by conducting a series of structured interviews. These interviews were conducted with staff members including legal counsel, finance, human resources, and registry, as well as the Executive Director and the Chairperson. In addition to the interviews, a review was undertaken of relevant documents that provide insight into the history, context and nature of risks and risk management objectives within the Tribunal. At the time this performance report was written, discussions between the external resource who conducted the field work and senior management were ongoing with the objective of finalizing the risk assessment in order to begin developing an action plan to address any applicable risks.

In addition to the organization wide risk assessment, a Threat and Risk Analysis (TRA) concerning the reliability and security of the Tribunal's Information Technology (IT) systems and infrastructure was undertaken prior to the end of the fiscal year. The TRA was conducted in accordance with the Government of Canada's Harmonized Threat and Risk Assessment (HTRA) Methodology. As a result of this assessment and the Tribunal's experience with a detected threat, the Tribunal took steps to mitigate this threat by making arrangements through Public Works and Government Services Canada to acquire technology services that would improve program delivery at the Tribunal and effectively address and manage risk in a cost-efficient manner.

Summary of Performance

The following tables display the financial and human resources managed by the Tribunal in 2010–2011.

2010–11 Financial Resources ($ millions)

Planned Spending	Total Authorities	Actual Spending*
4.5	4.8	4.4

* Does not include a total of $1.2 million for accommodation provided at no charge by PWGSC and amortization expense for capital assets.

2010–11 Human Resources (full-time equivalents-FTEs)

Planned	Actual	Difference
26	18	8

Strategic Outcome: Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.

Performance Indicators	Targets	2010–11 Performance
Tribunal decisions/ruling	Rendering decisions within four months of the close of the hearing in 80% of the cases	Not met. The Tribunal was unsuccessful in delivering its written decisions within the sought-after four-month timeline from the close of hearing. Unlike hearings before the courts, Tribunal hearings often involve parties who cannot afford professional legal representation. This means they represent themselves in dealing with complex facts, evidence and law. This tends to make the hearing, as well as the post-hearing analysis stage, last longer than is typically the case for administrative tribunals whose parties are represented by counsel.

Program Activity	2009–10 Actual Spending ($ millions)	2010–11 ($ millions)				Alignment to Government of Canada Outcome
		Main Estimates	Planned Spending	Total Authorities	Actual Spending	
Hearing of Complaints before the Tribunal	2.4	2.6	2.6	2.6	1.8	Social Affairs A diverse society that promotes linguistic duality and social inclusion.
Total	2.4	2.6	2.6	2.6	1.8	

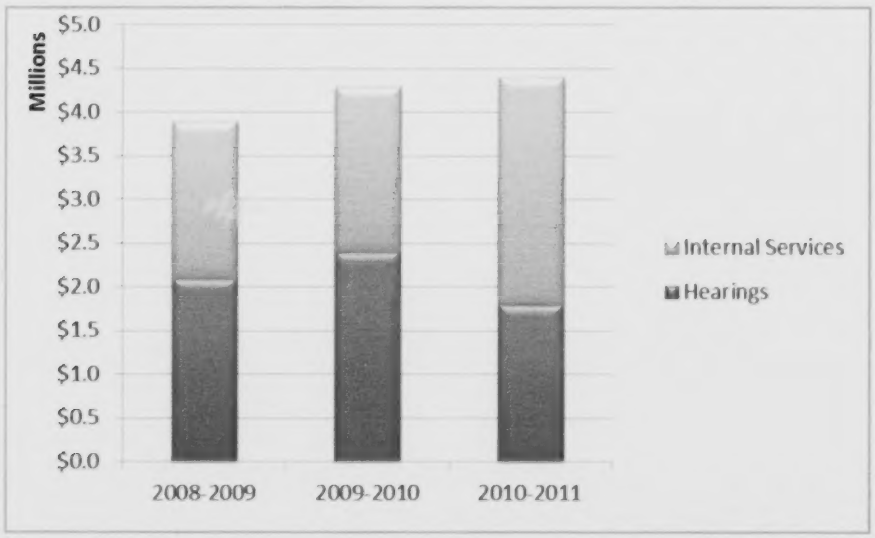
Program Activity	2009–10 Actual Spending ($ millions)	2010–11 ($ millions)			
		Main Estimates	Planned Spending	Total Authorities	Actual Spending
Internal Services	1.9	1.9	1.9	2.2	2.6

Registry - Lower expenditures for this activity resulted from reduced salary costs associated with a number of vacant positions. In addition, reduced costs for hearings were realized by utilizing meeting facilities provided at no charge, increased resolution of complaints through mediation, and shorter hearing times achieved at the pre-hearing stage to narrow the issues and reach agreement on the facts. While the latter cost reductions are expected to continue into the future, staffing of vacant positions will result in increased salary expenditures.

Internal Services – Increased costs were incurred for professional and special services to provide human resource capacity to the organization in the critical areas of executive direction, information technology, and finance to support transformative plans that will enable to Tribunal to enhance program delivery, improve case management and resolution of complaints, better manage risks and provide internal services more cost-efficiently. The organization also experienced an increase in relocation costs.

Expenditure Profile

Departmental Spending Trend ($ millions)



Overall, actual spending of $4.4 million was $100,000 less than planned spending and relates to lower expenses for employee benefits. The difference between actual and authorized spending of $4.8 million is attributable to an operating budget carry forward from 2009-2010 and salary amounts recoverable from Treasury Board that were not needed.

Actual spending for 2010–2011 reflected the planned spending amount. Some of the planned expenditures realized are costs for relocation of Tribunal members, and the completion of a Threat and Risk Analysis (TRA) concerning the reliability and security of the Tribunal's Information Technology (IT) systems and infrastructure. Other spending increases from 2009-2010 included professional services relating to an organizational restructuring and fees paid to part-time Tribunal members.

Note that actual spending in the graph above and in the Financial Summary table on page 24 does not include a total of $1.2 million for accommodation provided by Public Works and Government Services Canada, and amortization expense for capital assets.

Estimates by Vote

For information on our organizational votes and/or statutory expenditures, please see the 2010-11 Public Accounts of Canada (Volume II) publication. An electronic version of the Public Accounts is available at Public Works and Government Services Canada's website. See Public Accounts of Canada 2010, http://www.tpsgc-pwgsc.gc.ca/recgen/txt/72-eng.html.

Section II: Analysis of Program Activities by Strategic Outcome

Strategic Outcome

Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.

Program Activity: Hearing of complaints before the Tribunal

The Tribunal inquires into complaints of discrimination to decide, following a hearing before Tribunal members, if particular practices have contravened the *Canadian Human Rights Act*. Tribunal members also conduct hearings into applications from the Canadian Human Rights Commission and requests from employers to adjudicate on decisions and directions given by the Commission under the *Employment Equity Act*.

2010–11 Financial Resources ($ millions)

Planned Spending	Total Authorities	Actual Spending
2.6	2.6	1.8

2010–11 Human Resources (FTEs)

Planned	Actual	Difference
13	6	7

Expected Results	Performance Indicators	Targets	Performance Status
Access to an adjudication process that is efficient, equitable and fair to all who appear before the Tribunal	Timeliness of initiating inquiry process	Initiate inquiry within 10 days of referral, in 90% of cases by the Commission	Not met. Although cases are officially logged in on the date they are referred by the Commission, the inquiry cannot be initiated until key documents are also received. These documents frequently post-date referral by as much as a month.
	Percentage of cases commenced within timelines	Commence hearings within 6 months of receiving a complaint/referral, in 70% of cases	Met all. 91% of hearings were commenced within the 6 months of receiving a complaint/referral.
	Percentage of cases completed within timelines	Conclude inquiries within 12 months of referral, in 70% of cases	Met all. 88% of inquiries were concluded within 12 months.
Clear and fair interpretation of the *Canadian Human Rights Act* and the *Employment Equity Act* Meaningful legal precedents for use by employers, service providers and Canadians	Number of judicial reviews (overturned vs. upheld)	Majority of decisions are either not judicially challenged or are upheld when challenged	Met all. 63% of decisions were upheld

Performance Summary and Analysis of Program

Access to justice for ordinary Canadians requires a process that is impartial, fair to all parties and that delivers results in a timely and cost effective manner. The Tribunal implemented initiatives such as intensive pre-hearing management and greater use of evaluative mediation to improve its services and program delivery. Preliminary results indicate that pre-case management and greater used of evaluative mediation are lowering costs and reducing overall time for achieving resolution of complaints.

Lessons Learned

The strategic shift away from interest and position-based approaches to resolution of complaints before the Tribunal is producing positive results that bode well for continued and/or expanded use. The Tribunal will continue to research innovative methods for resolving complaints to enhance access to justice for ordinary Canadians.

Tribunal Decisions 2010-2011

The following summaries of Tribunal decisions from 2010–2011 illustrate the kinds of complaints brought before the Tribunal and how such cases affect all Canadians. Summaries of other Tribunal decisions rendered in calendar year 2010 can be found in the Tribunal's 2010 annual report.

Breast v. Whitefish Lake First Nation **2010 CHRT 10**

The complainant alleged that the respondent First Nation government had discriminated against him by refusing to continue to employ him based on his disability and family status contrary to section 7 of the *CHRA*. The complainant had been employed with the respondent as a school bus driver and water truck driver until one day he experienced sudden vision loss in his right eye. He sought and obtained medical leave from the respondent. The complainant alleged that when he subsequently tried to return to work, the respondent refused to give him his former duties back, and in fact constructively dismissed him by offering him employment as the sewage truck driver. The complainant perceived the sewage driver position as a demotion; in his view, it was of lower status and unpleasant. The complainant also viewed as discriminatory the respondent's decision to give his old water truck driver position to the brother of the respondent's Chief at that time.

In regard to the allegation of family status discrimination, the Tribunal concluded that no *prima facie* case had been made out since no evidence had been led suggesting that the fraternal relationship between the replacement driver and the then Chief of the respondent was a factor in the respondent's decision to give the water truck job to the former. However, with regard to the allegation of discrimination based on disability, the Tribunal concluded that the complainant had made out a *prima facie* case. Thus, the respondent had a duty to accommodate the complainant. The Tribunal found that the respondent had made a reasonable proposal for accommodating the complainant's disability. In all the circumstances of the case, the complainant's refusal to accept the available sewage truck job, at the same pay and with the same benefits as his water truck job, was unreasonable. The complainant did not fulfill his duty to facilitate the accommodation process and, consequently, the Tribunal dismissed his complaint.

Results for Canadians
This decision serves as a valuable reminder for employees and employers that accommodation is in many cases a 2-way street. Employees who are confronted with *prima facie* discrimination are entitled to expect the employer to make efforts to accommodate them, but they have their own legal duty to facilitate the accommodation efforts of their employer. The decision also provides valuable results for Canadians from the perspective of the Tribunal's vision of access to justice. Through active pre-hearing case management and exploration of the issues with counsel at the opening of the hearing, a number of facts were agreed to by both counsels. As well, the issues were narrowed to a few discrete ones. This resulted in shortening and narrowing the hearing to 2 days, instead of the scheduled 5 days. In addition, the medical evidence of the complainant's family physician and specialist, and that of the respondent's expert, was entered without the need to subpoena the physicians, resulting in a cost savings to both parties.

Johnstone v. Canada Border Services Agency **2010 CHRT 20**

The complainant alleged that Canada Border Services Agency had engaged in a discriminatory practice on the ground of family status in a matter related to employment contrary to sections 7 and 10 of the *CHRA*. The complainant was a Border Services Officer who had been working full-time rotating shifts. While in the respondent's employ, she had two children. Prior to returning from each of her maternity leaves, she asked the respondent for full-time static shifts as the rotating shifts made it very difficult to arrange childcare. Both times, she was faced with an unwritten policy of the respondent that it would provide static shifts to accommodate child-rearing responsibilities, but it would not provide full-time hours. The complainant alleged that the respondent's policies forced her to work part-time upon her return to work, resulting in her being given fewer hours and with an attendant loss of full-time employment benefits.

The Tribunal concluded that discrimination on the ground of family status included situations like the complainant's, where a work requirement came into conflict with her childcare responsibilities and, on that basis, a *prima facie* case of discrimination had been made out. On the question of whether the respondent had accommodated the complainant's family status to the point of undue hardship, the Tribunal found that the respondent had not assessed whether it could accommodate the complainant's family responsibilities. In the Tribunal's view, the respondent could have dealt individually with family status accommodation cases as they arose, within already existing mechanisms. Having found the complaint to be substantiated, the Tribunal

ordered the respondent to establish written policies satisfactory to the complainant and the Canadian Human Rights Commission, in order to address family status accommodation requests. Furthermore, these policies had to include a process for individualized assessment of those making the accommodation requests.

This decision is currently subject to an application for judicial review.

Results for Canadians
The relevance and importance of the issues dealt with by the Tribunal in this decision are underscored by the fact that four subsequent Tribunal decisions in 2010 dealt with allegations of family status discrimination based on *childcare responsibilities*. While the debate as to the proper interpretation of "family status" as a prohibited ground of discrimination will continue in the Federal Court, the Tribunal, in the *Johnstone* decision, has made a tangible contribution to the jurisprudential and policy discussion that will be taken up in the judicial arena. Moreover, the *Johnstone* decision provided the Tribunal with an opportunity to explore a linkage with a previous analysis that it had conducted in a different case, 17 years earlier, in respect of the same issue.

James Louie and Joyce Beattie v. Indian and Northern Affairs Canada **2011 CHRT 2**

The complainants alleged that officials of Indian and Northern Affairs Canada (INAC) had engaged in discriminatory conduct in the provision of services contrary to section 5 of the *CHRA*. The complainants had entered into a joint venture agreement for a long-term and pre-paid residential lease. The proposed lease was to be for a term of 49 years with a nominal rent of $1. The complainants applied to INAC for a lease under s. 58(3) of the *Indian Act*, which provides that the Minister may lease for the benefit of any Indian the land of which the Indian is lawfully in possession. INAC officials took issue with the nominal rent and asserted that they had an unfettered right to determine all aspects of the proposed lease, including periodic rent based upon appraisal of the subject land.

The Tribunal found that the complainants' joint venture agreement was either misunderstood by INAC officials or was never given adequate consideration by them. INAC attempted to impose unilateral authority over every aspect of the complainants' proposal for a locatee lease. In doing so, INAC demonstrated how the *Indian Act* has become an anachronism that is out of harmony with the guaranteed individual liberty, freedom, and human rights enjoyed by all Canadians. The Tribunal concluded that the application process under s. 58(3) of the *Indian Act* must become an enabling administrative function that recognizes and accepts status Indians as personally

responsible Canadians capable of making their own determinations of anticipated benefits to be derived from leasing their lands, and that ministerial discretion must not be exercised unilaterally. The Tribunal ordered that INAC reconsider the complainants' applications and amend its policies to provide that where individual locatees have determined for themselves that a transaction is for their individual benefit, INAC will accept that determination and conduct the processing of requested leases on that basis.

This decision is currently subject to an application for judicial review.

Results for Canadians
With the repeal of section 67 of the *CHRA*, the Tribunal now has the jurisdiction to consider discrimination complaints emanating from the application of the *Indian Act*. This decision is one of the first cases where the Tribunal had the opportunity to apply the *CHRA*'s anti-discrimination scheme to a provision of the *Indian Act*. This decision will affect the manner in which INAC (now called AANDC) and other federal government departments interpret and apply the *Indian Act*. Specifically, any application of the *Indian Act* must take into account the discriminatory practices identified in the *CHRA*. The *CHRA* identifies these practices, and seeks their eradication, with a view to ensuring equal opportunity for all individuals, including status Indians.

FNCFCS et al. v. Attorney General of Canada **2011 CHRT 4**

The Assembly of First Nations and the First Nations Child and Family Caring Society filed a complaint alleging that First Nations children living on reserve were being discriminated against by Indian Affairs and Northern Development Canada ("INAC"— renamed in May 2011 to Aboriginal Affairs and Northern Development Canada - AANDC). According to the complainants, funding for child and family care services for on-reserve children was inadequate when compared to the funding that provinces provide to other children residing off reserve. The complainants argued that this inadequacy in funding differentiated adversely against First Nations contrary to section 5(b) of the *CHRA*. The respondent brought a motion for a ruling that the issues raised by the complaint were not within the jurisdiction of the Tribunal. In particular, it argued that funding/transfer payments did not constitute the provision of "services" within the meaning of the *CHRA* and that INAC's funding could not, as a matter of law, be compared to provincial funding.

The Tribunal determined that it could not determine the services issue on the evidence filed. INAC's funding scheme is complex: it supports 108 First Nations child welfare service providers mandated to deliver child welfare to approximately 160,000 children and youth in approximately 447 First Nations communities. Various funding agreements and memoranda are involved and there are provincial and territorial differences in funding schemes and service models. Given that the material facts were not clear, complete and uncontroverted, the Tribunal was not prepared to rule on the services issue without a full oral hearing.

However, on the comparator issue, the Tribunal determined that it had sufficient evidence and submissions to decide the question. According to the words, scheme and object of section 5(b) of the *CHRA*, the Tribunal held that in order to find that adverse differentiation exists, one has to compare the experience of the alleged victims with that of someone else receiving those same services from the same provider. In this regard, the Tribunal found that—even if INAC's funding could be viewed as a service—the *CHRA* did not allow a comparison to be made between federal government funding and provincial government funding, as these various funding streams would emanate from separate and distinct service providers with separate service recipients. The Tribunal also found that if it were to accept the comparison being advocated by the complainants, such a conclusion would drastically alter the interpretation to be given to other sections of the *CHRA*, and it would lead to unacceptable consequences for Aboriginal people themselves. As a result, the Tribunal dismissed the complaint as it could not succeed on this legal point.

This decision is currently subject to an application for judicial review.

Results for Canadians
Even though the complaint in this case does not directly impugn the *Indian Act*, it is a harbinger of the complex and novel issues that may be raised by the repeal of section 67 of the *CHRA*. The scope and breadth of this complaint exceeded any complaint filed with the Tribunal to date, and reinforces the Tribunal's plan to work with First Nations communities to learn how it can facilitate access to justice for them in a cost-effective, innovative, and culturally sensitive manner. In this decision, the Tribunal also provides insightful analysis and interpretation of the *CHRA*, examples of which include the Tribunal's determination that the complaint could be dismissed under the *CHRA* without a full oral hearing; its interpretation of the term "differentiate adversely" as used in s. 5; and its determination regarding appropriate comparator groups.

Judicial Review

As the table below illustrates, 40% of the Tribunal's 65 decisions of the past four years have been challenged, and less than 8% have been overturned. Although an exceptionally high proportion of Tribunal decisions were challenged (10 of 17) in 2010, 6 of the challenged decisions have already been reviewed by the Federal Court, which upheld the Tribunal's findings in all but one case. The Tribunal remains satisfied that, on the whole, its decisions continue to provide fair and equitable interpretations of the *Canadian Human Rights Act* and to set meaningful legal precedents.

Judicial Reviews*

	2007	2008	2009	2010	TOTAL
Complaints referred to Tribunal	82	103	80	191	**456**
Decisions rendered by Tribunal**	20	17	11	17	**65**
Decisions Upheld by Courts	5	1	3	5	**14**
Decisions Overturned by Courts	2	1	1	1	**5**
Judicial review withdrawn or struck for delay	0	2	0	1	**3**
Judicial review pending	0	0	1	3	**4**
Total challenges	**7**	**4**	**5**	**10**	**26**

* Case referral and judicial review statistics are kept on a **calendar year** basis only.

** Not all cases referred are resolved by a hearing that renders a decision. For example, a growing number of cases are being resolved by mediation.

Benefits for Canadians

As a key mechanism of human rights protection in Canada, the Tribunal gives effect to the Canadian ideals of pluralism, equity, diversity and social inclusion. It provides a forum where human rights complaints can be scrutinized and resolved and provides definitive interpretations on important issues of discrimination. The proximate result of the Tribunal's program is that complainants can air their grievances and achieve closure in a respectful, impartial forum. In the longer term, Tribunal decisions create meaningful legal precedents for use by employers, service providers and Canadians at large.

During the 2010–2011 fiscal year, the Tribunal issued 15 written decisions determining whether the CHRA was infringed in a particular instance (subject to rights of judicial review before the Federal Court). Although these decisions have a direct and immediate impact on the parties involved, they also have more far-reaching repercussions, giving concrete and tangible meaning

to an abstract set of legal norms. Although the CHRA prohibits discriminatory practices and exempts certain discriminatory practices from remedy, it does not provide examples. Nor does the *Act* define the term discrimination. Tribunal decisions are therefore the primary vehicle through which Canadians see the impact of the legislation and learn the extent of their rights and obligations under the *Act*.

Strategic Outcome

Individuals have equal access, as determined by the *Canadian Human Rights Act* and the *Employment Equity Act*, to fair and equitable adjudication of human rights and employment equity cases that are brought before the Canadian Human Rights Tribunal.

Program Activity: Internal Services

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of the Tribunal. These groups are: Management and Oversight Services; Communications Services; Legal Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Real Property Services; Material Services; Acquisition Services; and Travel and Other Administrative Services. Internal services include only those activities and resources that apply across the organization and not to those provided specifically to a program.

2010–11 Financial Resources ($ millions)

Planned Spending	Total Authorities	Actual Spending
1.9	2.2	2.6

2010–11 Human Resources (FTEs)

Planned	Actual	Difference
13	12	1

Performance Summary and Analysis of Program Activity

Plans were developed that laid the groundwork to enable the Tribunal to provide for internal services in the areas of human resources, finance, and procurement and information technology by acquiring them from service providers such as PWGSC, who has a broader range of expertise while operating with an economy of scale that no micro-agency can match. This will allow the Tribunal to better manage risks while making service delivery more cost-efficient.

Lessons Learned

Initial research indicated strong opportunities to adopt service standards from similar organizations. However, future analysis determined that these standards were often mutually understood expectations and primarily verbal in nature.

Section III: Supplementary Information

Financial Highlights

Condensed Statement of Financial Position

As of March 31, 2011 ($ dollars)

	% Change	2010-2011	2009-2010 (Restated)
Total assets	37	620,052	452,214
Total liabilities	25	1,017,396	813,106
Equity of Canada	10	(397,344)	(360,894)
Total	37	620,052	452,214

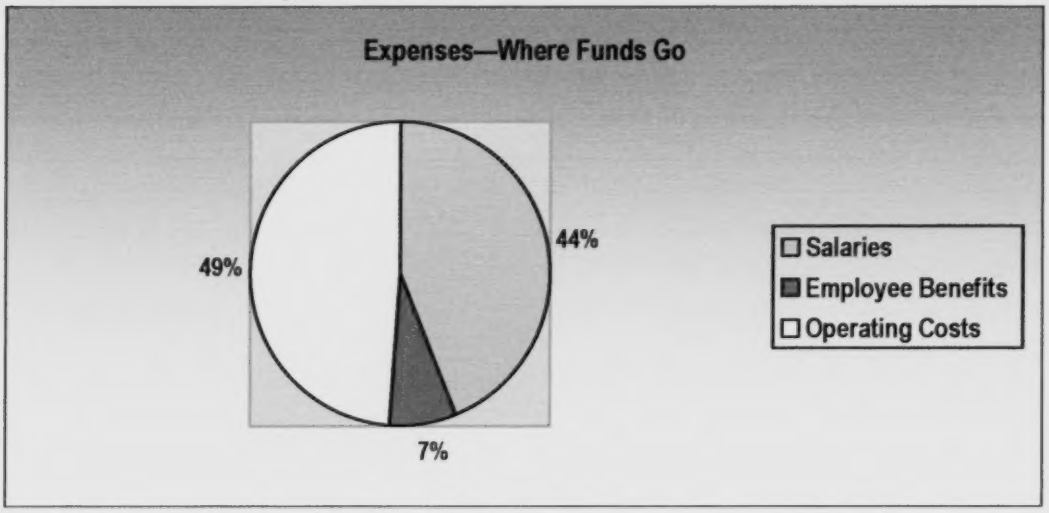
Condensed Statement of Operations

As of March 31, 2011 ($ dollars)

	% Change	2010-2011	2009-2010
Total Expenses	3	5,589,627	5,410,905
Total Revenues	64	90	55
Net cost of operations	3	5,589,537	5,410,850

Financial Highlights - Graph

Expenditure Analysis



These percentages are based on actual 2010–2011 expenditures of $4.4 million and do not reflect costs for services provided without charge or other expenses such as amortization. Major operating costs include travel to hearings across Canada, Tribunal member fees, professional services contracts, and temporary help and translation costs.

Financial Statements

The Tribunal's financial statements can be found on its website at:
http://chrt-tcdp.gc.ca/NS/reports-rapports/rtp-rap-eng.asp

Section IV: Other Items of Interest

Organizational Contact Information

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Legislation

The Minister of Justice is responsible to Parliament for the *Canadian Human Rights Act* (R.S. 1985, c. H-6, as amended).
laws.justice.gc.ca/en/h-6/index.html

The Minister of Labour is responsible to Parliament for the *Employment Equity Act* (S.C. 1995, c. 44, as amended).
laws.justice.gc.ca/en/E-5.401/index.html

Annual Reports

The following documents can be found on the Tribunal's website:

Annual Reports	chrt-tcdp.gc.ca/NS/reports-rapports/ar-ra-eng.asp
Performance Reports	chrt-tcdp.gc.ca/NS/reports-rapports/perf-rend-eng.asp
Reports on Plans and Priorities	chrt-tcdp.gc.ca/NS/reports-rapports/plans-eng.asp